

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS and BRENDA HILL,

Plaintiffs,

No. 1:20-cv-00915

v

HON. PAUL L. MALONEY

JOCELYN BENSON, in her official and
individual capacities as the Secretary of State,
JANICE WINFREY, in her official and
individual capacities as the Detroit City Clerk
and, DETROIT DEPARTMENT OF
ELECTIONS,

Defendants.

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**DEFENDANT SECRETARY OF STATE JOCELYN BENSON'S
MOTION TO DISMISS**

Defendant Jocelyn Benson, Secretary of State for the State of Michigan, moves for dismissal of Plaintiff's complaint pursuant to Fed. R. Civ. Proc. 12(b)(1) and (6), for the following reasons:

1. Plaintiffs' complaint fails to state a claim against the Michigan Secretary of State and must be dismissed.
2. Plaintiffs' claim for money damages against the Secretary of State in her official capacity under 42 U.S.C §1983 are barred by the Eleventh Amendment and must be dismissed.
3. Plaintiffs' claim for money damages against the Secretary of State in her individual capacity under 42 U.S.C §1983 are barred by the qualified immunity and must be dismissed.
4. Plaintiff have failed to state a claim under a "class of one" theory of equal protection.
5. Plaintiffs' claims challenging the Secretary's instructions to local officials about the Court of Claims' injunction are moot in light of the Court of Appeals' reversal and the subsequent dissolution of the injunction.
6. Plaintiffs lack standing to raise a "vote dilution" claim under the Equal Protection Clause.
7. Plaintiffs have failed to state a claim for a violation of substantive due process or equal protection.
8. Concurrence in the relief sought in this motion was requested on October 20, 2020 and was denied.

For these reasons and the reasons stated more fully in the accompanying brief in support, Defendant Michigan Secretary of State Jocelyn Benson respectfully requests that this Honorable Court enter an order dismissing Plaintiff's complaint against her in its entirety and with prejudice, pursuant to Fed. R. Civ. Proc. 12(b)(1) and (6).

Respectfully submitted,

DANA NESSEL
Attorney General

s/Erik A. Grill

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Dated: October 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing of the foregoing document as well as via US Mail to all non-ECF participants.

s/Erik A. Grill

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